

Docket 95-412

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of: )  
Request Of A.C. Nielsen Company )  
for Permissive Use of Line )  
22 of the Active Portion of )  
the Television Video Signal )  
To: The Commission

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REPLY TO OPPOSITION TO REQUEST

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## SUMMARY

Airtrax's claims are based upon a fundamental misunderstanding of Nielsen's national ratings business and the use of Nielsen's "AMOL" system in support of that business. Moreover, many of Airtrax's contentions have already been rejected by the Commission in prior proceedings. Indeed, some of the positions Airtrax has taken in its Opposition have been opposed by Airtrax itself in other proceedings. In this context, Airtrax's "Opposition" must be seen for what it is: simply an unjustified attempt to delay the granting of Nielsen's requested Permissive Authority in order to advance Airtrax's own business interests.

Nielsen's AMOL system is used to obtain program "line up" information that is crucial to the preparation of Nielsen's national ratings. The AMOL system currently operates by encoding Signal Identification ("SID") Codes on line 20 in the Vertical Blanking Interval. Due to the design of the recording and editing equipment used in many stations today, however, the SID Codes appearing on line 20 are often "stripped" or deleted before they can be detected by Nielsen's AMOL decoders in the various television markets. Thus, the AMOL system is only of very limited use in the preparation of national ratings of recorded syndicated programming. To allow the preparation of ratings of syndicated programming, which the Commission has already

determined to be important to station operations and in the public interest, Nielsen requires authority to encode and to arrange for the broadcast of SID Codes on line 22.

Nielsen's use of line 22 will not have any adverse effect on broadcast service, nor degrade television service received by viewers. The Commission has previously approved the use of the AMOL system in the transmission and detection of SID Codes, and the system has been used for over 15 years in 200 markets without degrading television service in any way.

By its nature, Nielsen's ratings service requires that the SID Codes be transmitted as integral parts of the associated programs. Moreover, there are no reasonable alternatives to the AMOL system to obtain line up data needed to prepare these ratings, nor to the use of line 22 to implement the AMOL system in connection with syndicated programming.

Airtrax's contention that Nielsen will somehow force broadcast stations to broadcast the SID Codes is speculative and contrary to fact and experience. Nielsen has operated the AMOL system for over 15 years without any such claims being made by the stations themselves and, in fact, has implemented a version of the AMOL system for use in those stations that elect not to broadcast the Codes.

Finally, Nielsen's proposal should not be subject to the delays incident to the imposition of public notice and comment procedures. Nielsen's AMOL system already has been the subject of public notice and comment procedures and indeed has been implemented in the "public" marketplace for over 15 years without objection. Moreover, the Commission has granted in the past requests for authority to use line 22 for SID Code transmissions without the imposition of public notice and comment procedures. Indeed, Airtrax itself successfully argued against having its own request for authority to use line 22 made subject to notice and comment procedures. In these circumstances, Nielsen's Request should be granted without further delay and in spite of Airtrax's unwarranted objections.

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**To: The Commission**

## REPLY TO OPPOSITION TO REQUEST

A.C. Nielsen Company ("Nielsen"), by its attorneys, herein replies to the "Opposition to Request" filed by Airtrax, a California General Partnership ("Airtrax"), on August 8, 1989 (the "Opposition"). Airtrax's Opposition was filed to oppose the granting of Nielsen's Request for Permissive Authority, which was filed by Nielsen in letter form on July 19, 1989 (the "Request"). Nielsen's Request, in turn, sought the Commission's permissive authority to use line 22 of the active portion of the television video signal for the purpose of transmitting Signal Identification (or "SID") Codes<sup>1/</sup> in support of Nielsen's national ratings services. In support of this Reply, Nielsen states as follows:

1/"Source Identification" (or "SID") codes identify a program's originating source, and the city, date and time of origination.

1. Airtrax makes in its Opposition a variety of allegedly factual accusations and contentions regarding Nielsen's business and proposed use of line 22. Many of Airtrax's claims are factually inaccurate and have been made either knowingly or recklessly by Airtrax simply to create the appearance of a controversy where none actually exists. Moreover, virtually each and every one of Airtrax's substantive claims has been rejected previously by the Commission. Indeed, Airtrax itself has even opposed many of the very same positions it takes in its "Opposition" in prior proceedings related to its own efforts to obtain authority to transmit SID Codes on line 22. When placed in this context, Airtrax's contentions are revealed not to be the good faith opposition they pretend, but simply as part of an effort to delay the granting of the Permissive Authority that Nielsen requested.<sup>2/</sup>

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<sup>2/</sup>A further manifestation of Airtrax's true purpose is reflected in the efforts that it has undertaken to cause various parties to file letters that request the Commission to delay consideration of Nielsen's Request for Permissive Authority. It is obvious from a review of these letters that Airtrax even has gone so far as to mislead some of the letters' authors regarding the substance of Nielsen's Request. For example, at least one of the letters that Nielsen has had the opportunity to review indicates that the author had been informed that Nielsen is seeking through its Request a "reconsideration" of Airtrax's authority to use line 22, rather than a grant of similar authority to Nielsen. See Letter dated August 4, 1989 from Harold A. Shoup of the American Association of Advertising Agencies to Mr. Alex B. Felker. This, of course, is not the case. As with Airtrax's Opposition in general, therefore, Nielsen cautions the Commission to consider the context and background within which these letters were written before accepting the concerns raised in those letters at face value.

## **I. FACTUAL BACKGROUND**

2. As the Commission is aware, Nielsen provides a variety of "rating" services to members of the broadcast industry, including broadcast stations themselves, the national broadcast and cable networks, program producers (whether networks or program syndicators), and advertisers and their agencies. The most commonly known of these rating services is the "national" ratings, whereby Nielsen estimates the size and demographic composition of the national audience viewing specific nationally-televised programs.

3. Nielsen's national ratings of network and syndicated programming are compiled from two principal sources of information: 1) data regarding the stations to which monitored television receivers are tuned at specified times ("tuning information"), and regarding the demographic characteristics of the persons watching the television receivers at that time ("viewing information"), which is derived principally from Nielsen's "People Meters" that are located in monitored homes; and 2) data regarding the programs being broadcast by the respective broadcast stations at those times (the station's program "line up").<sup>3/</sup> In most cases today, Nielsen obtains the information it requires regarding a station's line up through the

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<sup>3/</sup> In contrast, Nielsen's "local" ratings are based primarily on tuning and viewing information provided by "autometers" and diaries maintained on a per-household basis.



use of the Nielsen "AMOL," or "Automated Measurement of Line Ups" system.<sup>4/</sup>

4. Through the use of the AMOL system as currently implemented in over 200 markets, SID Codes are encoded onto line 20 of nationally-televised network or syndicated programming and the encoded programs are then delivered to the station in the normal course of business. When the encoded programs are broadcast, the Codes are detected by special AMOL receivers located either in the respective stations (the "in-station" method of monitoring) or in the community served by the station (the "radiated" method of monitoring).<sup>5/</sup> This Code transmission information is then coupled with program-name information (the program "listings") provided by the program suppliers (thus

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<sup>4/</sup>Nielsen presently relies upon the AMOL system for virtually all of its network programming line up information and about half of the syndicated programming line up information. The reasons that the AMOL system is not used to obtain a greater portion of the syndicated programming line up information is set forth at Para. 5, infra, and underlies Nielsen's Request for Permissive Authority.

Contrary to the claims made by Airtrax, Opposition at 2, 4, 10, the AMOL-derived information is used almost exclusively to obtain line-up information needed for the preparation of Nielsen's national ratings, not simply to verify the transmission of network programming. Nor is the AMOL-derived information used in the preparation of a station's local ratings.

<sup>5/</sup> The "in-station" method of gathering line-up information is used in connection with those stations that have decided to "strip," or not to broadcast, Nielsen's SID codes. Through the "in-station" method, the Codes are read just prior to their being "stripped" by the station in the course of broadcasting the associated program.

allowing Nielsen to associate a program's name with its recorded broadcast time), and with the "tuning and viewing" information recorded by the People Meters, to produce a national "rating," or audience estimate, for that program.

5. Without any of these three principal pieces of information -- the AMOL-generated line up data, the program listings supplied by the programmers, and the "tuning" and "viewing" information generated by the People Meters -- Nielsen would not be able to prepare its national ratings with the accuracy and timeliness required by the industry. More specifically, were Nielsen not able to use the AMOL system to gather line-up information, it would be forced to obtain this information from manually-generated reports produced by the networks and program syndicators, which in turn would be based upon information obtained from the respective stations.<sup>6/</sup> Reliance on such manually-produced reports would undercut greatly the accuracy of the line-up information used in producing Nielsen's national ratings, and thus the accuracy of ratings themselves,<sup>7/</sup> would increase the cost of producing the ratings, and would greatly delay the production of the ratings information

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<sup>6/</sup>It would be virtually impossible for Nielsen to contact each and every station nationwide to obtain their line up information individually.

<sup>7/</sup>At best, the manually-produced reports would reflect the times that specified programs were scheduled to be broadcast, not the times when those programs were actually broadcast, which can vary from scheduled times.

to an unacceptable degree.

6. The AMOL system insofar as it uses line 20 to transmit SID Codes is not foolproof, however, and has been of only limited use in the preparation of national ratings for syndicated programming. The reason for this is related principally to the fact that syndicated programs are often recorded by stations to allow their broadcast at a time after the programs are initially delivered to the stations. Syndicated programs are often broadcast by the respective stations at times that vary from station-to-station, and at times different from when the programs are delivered (usually by satellite) to the respective stations. To delay the broadcast in this manner, the stations record these programs for broadcast at a later time.

For technical reasons associated with the normal operating characteristics of the recording and editing equipment used by many stations, however, the Nielsen SID Codes that are now placed on line 20 (but not those placed on line 22) are often "stripped" or deleted during playback or editing of the programs, rendering the AMOL system of limited use to obtain line up information related to recorded -- i.e., syndicated -- programming.<sup>8/</sup>

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<sup>8/</sup> This stripping is not limited to "misaligned" or otherwise defective or inadequate equipment, as Airtrax has suggested. Opposition at 8. Rather, this stripping occurs because much of the recording and editing equipment used today is designed to pass or record only the "active" portion of the video signal; i.e., line 22 and above.

Consequently, Nielsen requires permissive authority to use line 22 to transmit its SID Codes, particularly to provide its national ratings in connection with syndicated programming.<sup>2/</sup>

7. The technical characteristics and specifications of Nielsen's AMOL system have been provided to, and reviewed and approved by, the Commission. The AMOL system was first described and approved for use by the Commission in 1974, when the National Broadcasting Company ("NBC") and the other major television networks obtained Special Temporary Authority ("STA") to test the AMOL system by using it to broadcast SID Codes on line 20 of the Vertical Blanking Interval. See Comments of the National Broadcasting Company, Inc., filed on February 1, 1979 in B.C. Doc. No. 78-308, at 3. Based upon these test results, the AMOL system was found by the Commission not to cause degradation of the service received by television viewers. Specifically, the Commission determined that the AMOL system data revealed

virtually no potential for program degradation ... and the testing done pursuant to the STA's seems to confirm this. Therefore, we would anticipate no problems in allowing the SID signals to be transmitted on the same non-interfering basis as currently applies for other test signals and cue and control signals.

Permitting Transmission of Program-Related Signals in the

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<sup>2/</sup>While it sometimes occurs, this "stripping" problem is less significant with regard to network programming principally because network programming normally is broadcast by the network affiliates (with the SID Codes) at the time it is received at the stations, thus not requiring the use of recording and editing equipment that strips the Codes during editing or playback.

Vertical Blanking Interval of the Standard Television Signal, 43 Fed. Reg. 49331, 49333 (Sept. 22, 1978), at Para. 6.<sup>10/</sup>

Consistent use of the AMOL system in over 200 markets during the 15 years since the granting of NBC's STA has fully confirmed this conclusion; use of the AMOL system on line 20 has not degraded received television service in any way.

8. Nielsen's proposed use of the AMOL system to encode SID Codes onto line 22 similarly will not interfere or degrade television broadcast service. The technical characteristics of the AMOL system that will be used to transmit SID Codes on line 22 are exactly the same as those that the Commission reviewed and approved in 1978 with regard to the use of line 20, the only difference being the minor modification required to be made to the AMOL equipment by Nielsen to allow it to transmit on line 22.<sup>11/</sup> As stated above, this equipment has been operated in over 200 markets for over 15 years without adversely affecting broadcast service in those markets in any way.

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<sup>10/</sup> In 1981, based upon the successful completion of the tests authorized in the NBC STA and a Petition filed by NBC in 1977, the FCC amended its Rules to allow the AMOL system to be used to broadcast the SID codes on line 20. Amendment of Section 73.682 of the Commission's Rules to Permit the Transmission of Program Related Signals, 46 Fed. Reg. 40024 (July 29, 1981); 47 C.F.R. § 73.682(a)(21) (1989).

<sup>11/</sup> Notwithstanding the fact that the technical characteristics of Nielsen's AMOL System as used on line 22 are the same as the characteristics of the system as used on line 20 (which have already been provided to the Commission), we have set forth the technical characteristics of the Nielsen AMOL/line 22 system in Exhibit A hereto.

Similarly, for the same reasons that were found to be sufficient when authority to use line 22 was granted to Telescan, VidCode, Ad Audit, and Republic/Airtrax itself (i.e., overscanning by television receivers)<sup>12/</sup>, Nielsen's AMOL/SID Codes transmitted on line 22 will not be visible to viewers. To confirm this fact, Nielsen on May 30, 1989 undertook viewing tests during which individuals were given videotapes that were encoded with SID Codes on line 22 for viewing on their home television sets. Not a single viewer in the test reported seeing the Codes, even though some were told in advance that the Codes were present.

To allow the Commission itself to verify that the SID Codes appearing on line 22 will not be visible to the television audience, Nielsen has provided to the Commission's staff a VHS format videotape of a typical television program, line 22 of which was encoded with AMOL/SID Codes. As is readily apparent from a viewing of that tape, Nielsen's SID Codes are not visible during normal television viewing and the presence of the Codes on

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<sup>12/</sup> See Letter dated July 18, 1985 from James C. McKinney to Burton Greenberg, President of Telescan, Inc. (the "Telescan Authorization"); Letter dated July 18, 1985 from James C. McKinney to Erwin G. Krasnow, Counsel to Ad Audit, Inc. (the "Ad Audit Authorization"); Letter dated October 26, 1988 from Alex B. Felker to Kevin McMahon, Counsel to VidCode, Inc. (the "VidCode Authorization"); and Letter dated November 6, 1986 from James C. McKinney to John G. Johnson, Jr., Counsel to Republic/Airtrax (the "Airtrax Authorization"), all attached hereto as Exhibit B.

line 22 does not degrade the perceived quality of the program in any way.<sup>13/</sup>

## II. LEGAL BACKGROUND

9. The Commission has determined that ratings and program broadcast verifications are "important...to many entities involved in producing the programs which [a] station broadcasts, and without which its viable operation ... would be impossible." Coded Information in TV Broadcasts, 18 R.R.2d 1776, 1787 (1970). The Commission similarly has noted that SID Code transmissions, "while not intended for use by the viewing public ... clearly are related to ... the operation of a television station's primary program service," Telescan Authorization, supra note 10, and has recognized that the transmission of those Codes contribute to efficient broadcast operations, Ad Audit Authorization, supra note 10.

10. Consequently, the Commission has repeatedly determined that the transmission of SID Codes on line 22 was within the Communications Act's definitions of "special signals" and

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<sup>13/</sup>In conformance with the procedure used by the Commission in 1974 when it approved the use of Nielsen's AMOL system to broadcast SID Codes on line 20, see text supra, Nielsen requested on August 14, 1989 Special Temporary Authority from the Commission to conduct over-the-air tests of its line 22 AMOL system. The testing will be performed by incorporating the AMOL/SID codes into line 22 of programming that will be transmitted over various television broadcast stations.

"broadcasting," and was in the public interest. See Telescan, Ad Audit, VidCode and Airtrax Authorizations, supra note 10. The Commission has even determined with specific regard to Nielsen's SID Code transmission system that "the transmission on broadcast frequencies of signals intended to be used in the rendition of a nonbroadcast automatic program identification service [is] in the public interest." Permitting Transmission of Program-Related Signals, supra, quoting Report and Order in Docket 19314, 43 F.C.C.2d 927, 944 (1973) at para. 72; and see Coded Information in TV Broadcasts, supra.

### III. RESPONSE TO AIRTRAX'S SPECIFIC CONTENTIONS

#### A. Nielsen's Use of Line 22 Will Not Have Any Detrimental Effect On Broadcast Service.

11. Airtrax contends that Nielsen has failed to carry an alleged burden to establish that "it is not feasible to transmit AMOL-encoded information within the VBI." Opposition at 7. Contrary to Airtrax's protestations, Nielsen is not obligated to carry any such burden. Rather, the relevant burden for Nielsen to carry in this regard is to establish either that its use of line 22 will have no detrimental effect on broadcast service, or, as is quoted in Airtrax's own pleading, that it is "infeasible to transmit the signals by means which have no detrimental effect on the broadcast service." Opposition at 6, quoting Telescan Authorization, supra note 10.



12. As is established above, Nielsen's SID Codes on line 22 will not have any detrimental effect on the broadcast service. The AMOL System has been tested and used in the marketplace for almost 15 years without causing any degradation of broadcast service whatsoever, and Nielsen has successfully established through testing that its SID Codes will not be visible on line 22. The Commission itself has determined that the AMOL system presents "virtually no potential for program degradation," Permitting Transmission of Program-Related Signals, supra at Para. 6, and Airtrax has failed even to allege (as it could not) that Nielsen's Codes would be visible on line 22 during normal television viewing.

13. Nielsen also has established the necessity of its using line 22 to provide its national ratings service. As indicated above, the Codes loaded onto line 20 are stripped by the recording and editing equipment used in many stations, thus limiting greatly the utility of the current line 20/AMOL system, particularly insofar as it used to produce ratings of syndicated programming. This problem is a natural result of the normal operation of this equipment, and thus will occur without regard to the number of "AMOL decoders" in each market, Opposition at 7,

or "misalignment" of equipment," id. at 8.<sup>14/</sup>

14. Moreover, notwithstanding Airtrax's naive and self-serving assertion, there are no "simple measures" to overcome this problem. Rather, the only alternative to the use of the AMOL system would be the manual collection of line-up information, with the consequent reduction of the accuracy and timeliness, and increase in cost, of the resultant ratings. Similarly, as Republic/Airtrax recognized in its own request for authority to use line 22, there are no readily-usable alternatives to line 22. Line 21 is dedicated to close captioning, 47 C.F.R. §73.683(22), and most stations refuse to utilize the "in-station" method of AMOL Code detection because of the space required to be provided by the station for the equipment needed for this reception methodology.<sup>15/</sup> In short, contrary to adversely affecting broadcast station operations, Nielsen must receive -- as did Airtrax, Telescan, Ad Audit and VidCode -- authority to use line 22 in order to provide the

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<sup>14/</sup>As can be seen from the text, supra at Para. 6, the stripping problems requiring the use of line 22 have absolutely nothing to do with the "scan rate" of the AMOL receivers in the respective stations' communities. Compare Opposition at 4-5, 7.

<sup>15/</sup>On February 27, 1979, Nielsen wrote to the Commission in connection with the proposed amendment to the Commission Rules to accommodate SID Codes transmission on line 20, in which letter Nielsen further explained the industry's preference for the "radiated," rather than "in-station," method of AMOL code detection. As set forth in that letter, a copy of which is attached hereto as Exhibit C, the radiated method produces more accurate and reliable data than the in-station method and is less burdensome to station operations.

rating services that the Commission has determined are crucial to broadcast station operations.

B. Nielsen's SID Codes Are  
Integral Parts of the  
Associated Programs

15. Airtrax claims that

[t]o the extent that the traditional AMOL Service ... involves codes that ... are limited to information concerning the network's feed ... without reference to actual network program identification or content -- AMOL's 'nature and purpose do not require that it be transmitted as an integral part of its associated program material.'

Opposition at 10-11, quoting Telescan Authorization at 2.

Airtrax's contention manifests a striking lack of knowledge and/or candor regarding Nielsen's ratings business.

16. First, as stated above, Nielsen's AMOL-generated SID Codes are associated with actual program identifications in the process of producing Nielsen's national ratings. The fact that the program identification listings are provided to Nielsen by the networks separately from the Codes, rather than being incorporated into the encoded information itself, is irrelevant. The simple fact remains that the Codes are used by Nielsen with "reference to actual ... program identification" information. Opposition at 10-11.

17. Moreover, as with the Telescan system, the nature and purpose of Nielsen's AMOL system and ratings service requires that the Nielsen SID Codes be transmitted as an integral parts of the associated programs. Indeed, it is only because the Codes are integrated as a part of the associated programs that Nielsen can conclude from its detection of the Codes that the associated programs were, in fact, broadcast at specified times, and from that (once combined with the audience measurement information provided by People Meters and the program listings provided by the program source) compute the program's estimated audience or rating. Were the Code to become separated from its related program in any way, Nielsen could not properly rely upon this conclusion, and thus would be unable to estimate therefrom the audience that was viewing that program.<sup>16/</sup>

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<sup>16/</sup>Airtrax also claims that "were the Commission to authorize traditional AMOL coding on line 22, Airtrax's codes would be obliterated," thus "doing violence" to the "principle established" in the Telescan Authorization. Opposition at 11. Nielsen strenuously doubts, however, that the "principle" the Commission intended to establish when granting line 22 authority to Telescan was to protect Airtrax's monopoly use of line 22, which would be the natural result of the denial of Nielsen's Request and is the obvious goal of Airtrax's argument in this regard. In any case, even if Nielsen's and Airtrax's services were competitive (which they are not insofar as Nielsen uses its SID Codes for its national ratings and Airtrax uses its Codes for its commercial transmission verification service), and even though it also is true that the insertion of Airtrax's Codes onto line 22 of a program after the insertion of Nielsen's Codes would "obliterate" Nielsen's Codes as well, it should be for the marketplace -- not the FCC -- to decide between Nielsen's and Airtrax's services insofar as they propose to use line 22.

C. Nielsen Will Comply in  
All Respects With the  
Conditions that the Commission  
has Placed Upon Authorizations  
to Use Line 22.

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18. Airtrax contends that the language in Nielsen's Request, which noted that broadcast licensees will not be required to broadcast Nielsen's SID Codes on line 22 "outside of their contractual agreement with Nielsen and programmers," "leaves open the possibility" that television licensees "may" be required "conceivably against their preferences to broadcast Nielsen's SID codes." Opposition at 13. Airtrax's accusations are totally speculative and unsupported, are contrary to Nielsen's established business practices and experience,<sup>17/</sup> and have been rejected by the Commission in the past.

19. First, Airtrax's contention depends upon an inverted understanding of the burdens in this case. It is not for Nielsen to establish beyond its clear commitment that it will comply with the Commission's Rules and policies; rather, it is for Airtrax to establish that Nielsen will not comply in spite of its commitment. In this regard, Airtrax is and always will be unable to produce even a scintilla of evidence indicating that Nielsen will not fully comply with all the conditions that the Commission

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<sup>17/</sup>Indeed, it was specifically to address this concern held by a limited number of licensees that Nielsen developed the "in-station" method of SID Code detection. See text supra at Para. 3.

has placed upon its authorizations to use line 22. Rather, Airtrax is reduced to pure speculation, based upon a strained interpretation of a single statement in Nielsen's request,<sup>18/</sup> that it is "possible" that Nielsen "may" not comply. Such baseless conjecture cannot stand against Nielsen's unqualified commitment to comply with the Commission's requirements.

20. In fact, the Commission has already rejected similar speculations made against parties proposing to arrange for the broadcast of SID Codes by television stations. Just as was the case with regard to the networks' initial proposal to use line 20 for SID transmissions, the transmission proposed by Nielsen for

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<sup>18/</sup> The reference in Nielsen's Request to "contractual agreements" that may exist in connection with Nielsen's AMOL system was simply intended as a reference to the normal programming agreements between the stations and the program syndicators. There are, in fact, no agreements between Nielsen and the stations themselves in connection with the AMOL system, other than the agreements that allow Nielsen to place decoders in the stations preferring the "in-station" method of reception.

With regard to the programming agreements, the provisions calling for the station to broadcast the AMOL codes are the very same provisions that call for the station to broadcast the main body of the program, which has never been found to restrict unduly the stations' discretion in any way. In fact, these provisions are the very same which Airtrax must rely upon to have its SID codes broadcast. Thus, any claim against Nielsen in this area should likewise be made against Airtrax.

With regard to Airtrax's claim that program syndicators have the ability and incentive to limit the discretion of broadcast station licensees, Opposition at 11-18, Nielsen would respectfully suggest that Airtrax's potential customers -- the advertisers -- have far more power and incentive to demand that certain information be broadcast because they are the sources of the stations revenues. Thus, again, the Airtrax's speculations would be better directed toward itself.

line 22

would neither reserve line [22] for SID nor require individual stations to broadcast the SID signal supplied by the networks. The individual licensee would retain responsibility for the signal it broadcasts and would have the options of deleting the SID signal or substituting its own test cue and control signals.

Permitting Transmission of Program-Related Signals in the Vertical Blanking Interval of the Standard Television Signal, 43

Fed. Reg. 49331, 49333 (Sept. 22, 1978), at Para. 11. The Commission went on to state with regard to the use of line 20 for SID Codes:

As for the licensees' fears of network pressure to carry the SID signal, we observe that licensees are required to retain ultimate control over the content of their transmission, including radiated VBI signals. Hence, any attempt to interfere with a licensee's discretion to control the overall nature of its service offering, if it occurred, might constitute a matter warranting appropriate corrective action.

(Emphasis added). Amendment of Section 73.682 of the Commission's Rules to Permit the Transmission of Program Related Signals, 46 Fed. Reg. 40024 (July 29, 1981); 47 C.F.R.

§ 73.682(a)(21)(1989), at para. 7. Airtrax has provided no indication whatsoever that the same will not be true with regard to Nielsen's proposed use of line 22; i.e., if and when the Commission were to be presented with evidence that licensees were being forced to broadcast material against their will -- as Airtrax has failed to do -- the Commission is fully empowered to undertake "corrective action."

21. The history of Nielsen's implementation of its line 20 AMOL system reveals, moreover, Airtrax's speculations to be contrary to fact. In over 15 years of use, no broadcast station licensee to Nielsen's knowledge has ever complained that its discretion was unduly restricted as a result of its voluntary agreement to broadcast Nielsen's SID Codes. Indeed, for those stations that desire not to broadcast Nielsen's AMOL Codes, Nielsen has devised the "in-station" method of Code reading, pursuant to which any station choosing not to broadcast Nielsen's Codes on line 22 might be able to have their line ups read without the necessity of transmitting the Codes over the airwaves.

D. Nielsen's AMOL Format Does  
"Harmonize" With Nielsen's  
Intended Use of the AMOL System

22. Airtrax claims that Nielsen's AMOL format does not "harmonize" with Nielsen's proposed use of line 22. Nielsen has difficulty understanding what Airtrax is attempting to contend with this statement. It appears that Airtrax's contention is simply a commercial one; i.e., that the AMOL Codes may be of little use in providing advertising verification services. In response, Nielsen would respectfully suggest that it should be for the marketplace, not Airtrax or the FCC, to decide the usefulness of Nielsen's Codes and AMOL format, and Nielsen is



willing to have its service tested in that forum. Airtrax's blatant attempt to obtain protection of its business from the Commission should be rejected. To the degree that Airtrax is contending that Nielsen's format does not meet Nielsen's requirements related to the preparation of Nielsen's national ratings, Nielsen respectfully requests that such a determination be left to Nielsen, rather than Airtrax.

**E. It is Neither Necessary Nor Appropriate  
For the Commission To Subject Nielsen's  
Proposal to Public Notice and Comment  
Procedures**

23. Airtrax's final claim, though made only in its "Conclusions," is that Nielsen's proposal should be subject to public notice and comment procedures. However, it is neither necessary nor appropriate for the Commission to solicit public comments on Nielsen's proposal before issuing the permissive authority requested by Nielsen.

24. As stated above, the technical characteristics of Nielsen's AMOL system have already been subject to public review and comment, see Permitting Transmission of Program-Related Signals, supra, have undergone exhaustive testing, and have withstood the rigors of commercial implementation in over 200 markets over many years, all without any reports of actual or suspected degradation of signal quality. In addition, similar proposals to use line 22 for the purpose of transmitting SID